



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Peter E. Raber

Serial No.: 10/728,278

Filed: December 4, 2003

Title: Variable Focus System

Attorney Docket No.: 08814-00002


Group Art Unit: 2873

Examiner: Evelyn A. Lester

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

CERTIFICATE OF MAILING (37 C.F.R. 1.8a)

I hereby certify that this correspondence is, on the date shown below, being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to the Commissioner for Patents, Alexandria, VA 22313-1450.

 3/16/06  
Morgan S. Heller II Date

March 16, 2006

TRANSMITTAL OF ISSUE FEE

In connection with the above-identified application, attached are:

1. Issue Fee Transmittal;
2. Comments on Statement of Reasons for Allowance; and
3. Check No. 252806 in the amount of \$1,000 from Downs Rachlin Martin PLLC.

If any additional fees are due with respect to the present application, please charge, or credit any overcharge, to Deposit Account No. 04-1588.

Respectfully submitted,

DOWNS RACHLIN MARTIN PLLC

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BTV.472460.1

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Confirmation No.: 7151

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**COMMENTS ON STATEMENT OF REASONS FOR ALLOWANCE**

Applicant has reviewed the Examiner's statement of reasons for allowance accompanying the Notice of Allowability mailed December 19, 2005, and the prior examiner's statement of reasons for allowance accompanying the Office Action mailed May 17, 2005, and comments as follows.

Regarding the Examiner's statement of reasons for allowance accompanying the above-identified Notice of Allowability, Applicant agrees that the prior art does not show or fairly suggest an electrovariable optic having a plurality of focal configurations. Applicant also agrees that the prior art does not show or fairly suggest a system that includes an electrovariable optic and has the claimed structure and claimed limitations.

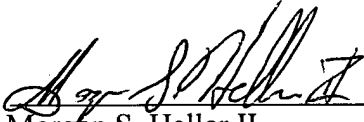
Regarding the prior examiner's statement of reasons for allowance accompanying the above-identified Office Action, this statement contains the sentence: "The prior art fails to teach a combination of all of the claimed features as presented in claim(s) [sic] 18-30, 42-56 and 62, wherein the claimed invention comprises a substrate having a plurality of optical elements

arranged in concentric arcs and movable with respect to the substrate as claimed.” [Emphasis added.] One construction of this sentence suggests that patentability of the recited claims is predicated on the claims containing both the limitations of 1) a substrate having plurality of optical elements arranged in concentric arcs and 2) the plurality of optical elements being movable with respect to the substrate as claimed.

It is Applicant’s position that this construction is not proper. Many of the allowed claims, particularly claims 42-61, do not contain the limitation that a plurality of optical elements be arranged in concentric arcs. It is Applicant’s position that the proper construction of the above-quoted sentence indicates that patentability of the recited claims is based, at least in part, on some of the claims including the limitation of a substrate having plurality of optical elements arranged in concentric arcs and on others of the recited claims including a plurality of optical elements movable with respect to a substrate as claimed. While some claims may include both limitations, both are not required for patentability.

Respectfully submitted,

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